

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

60116

FILE: B-184463

DATE: November 4, 1975

MATTER OF: Pulse Ambulance Service; Don's Ambulance
Service, Inc.

97578

DIGEST:

1. Where two low small business bidders on ambulance service are determined by contracting activity to be deficient in personnel and equipment, rejection without reference to SBA for consideration of issuance of COC would be improper, since capacity of small business bidders is for consideration under COC procedures.
2. Where protester contends small business bidder does not comply with wage and hour requirements and does not withhold income and social security taxes from employees, COC procedures are not required to be followed if contracting officer has reason to believe there is lack of business integrity on part of bidder; however, SBA is required to be notified of negative determination and SBA may appeal to head of procuring activity.

Invitation for bids (IFB) No. 671-3-76, for the furnishing of ambulance service for the period July 1975 through September 30, 1976, was issued as a total small business set-aside by the Supply Service, Audie L. Murphy Memorial Veterans Hospital, San Antonio, Texas. The IFB contained the following provisions relevant to the protest:

- "4. QUALIFICATIONS: a. Proposal will be considered only from bidders who are regularly established in the business called for and who are financially responsible and have the necessary equipment and personnel to furnish service in the volume required for all the items under this contract. Successful bidder shall meet all requirements of Federal, State or City codes regarding operations of this type of service.

"b. Each bidder must submit with his bid a letter in duplicate fully describing the make of vehicle, model and year which he agrees to furnish under this proposal including the location and telephone numbers of his establishment where calls are received and vehicles are immediately available for dispatch. This letter must contain information as to the metering devices or methods bidder proposes to use in determining mileage. The Contracting Officer will be notified in writing of any ambulance equipment added after award of contract.

"c. The right is reserved to thoroughly inspect and investigate the establishment, facilities, business reputation and other qualifications of any bidder and to reject any bid, irrespective of price, it shall be administratively determined lacking in any of the essentials necessary to assure acceptable standards of performance. If any ambulance equipment is added after inspection, subsequent to award of contract, it shall be inspected and approved by the Contracting Officer before being placed in use under this contract.

"5. ATTENDANTS: a. The prices quoted in the Schedule include the services of a qualified driver and an attendant on any assignment where a patient is transported in the performance of this contract. All attendants on duty must be qualified to administer oxygen and shall have successfully completed the Standard and Advanced First Aid Courses of the American Red Cross or U. S. Bureau of Mines, or equivalent. Proof in the form of a current or unexpired certificate that such first aid training has been successfully completed must be available upon request.

"b. Record of each employee as to character and physical capabilities of performing the duties of an ambulance driver or attendant must be maintained and made available for inspection upon request.

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"6. VEHICLE: a. The ambulance fleet and its equipment and supplies must be of the quality, model, and condition to assure the patient complete, high quality medical transportation and emergency first aid, if needed shall meet the minimum standards for maintenance, equipment and staffing of all ambulance vehicles operated.

"b. Each ambulance vehicle shall be of model and make to insure safe and comfortable transportation of the patient and must have sufficient headroom to accommodate the patient in a Fowler's position; and must be inspected and maintained daily to assure mechanical fitness for public safety. Each ambulance vehicle shall be equipped with such safety items as are from time to time required by Federal, local and state authorities in the area in which the ambulances are operated.

"7. AMBULANCE EQUIPMENT: Each ambulance shall be equipped at all times when transporting a patient in the performance of this contract with not less than the following equipment and such other equipment as required by Federal Laws or Laws of the State, County, and/or City in which it is operated:

- "a. Shall have one ambulance cot and a collapsible stretcher or two stretchers, one of which is collapsible.
- "b. Shall have adequate straps to secure the patient safely to stretcher or ambulance cot, and adequate means of securing the stretcher or ambulance cot within the vehicle.
- "c. Shall have adequate supply of sanitary sheets, pillowcases and blankets.
- "d. Shall have standard first aid kit.

B-184463

Upon learning of the proposed rejection of its bid, Pulse protested. Award has been postponed pending a decision on the protest. Essentially, Pulse takes exception to each of the deficiencies noted by the inspection committees, and suggests that the matter should have been submitted to SBA for possible issuance of a certificate of competency (COC) pursuant to section 1-1.708 (1964 ed. amend. 71) of the Federal Procurement Regulations (FPR). The procuring activity responds that a COC was not requested from SBA, because it was "not questioning the company's competency as to credit." However, it is not only where a small business concern is found to lack credit that the matter is required to be referred to SBA for a COC, but also where the concern is found to lack capacity. See FPR § 1-1.708-2(a). "Capacity" is defined in FPR § 1-1.708-1 as the "overall ability of a prospective small business contractor to meet quality, quantity, and time requirements of a proposed contract and includes ability to perform, organization, experience, technical knowledge, skills, 'know how,' technical equipment, and facilities." When the specific deficiencies for rejection of the two low bidders in this case are reviewed in light of the definition of "capacity," it is apparent that the proposed rejections were for lack of capacity. Accordingly, the rejection of the two low bidders without referral to SBA would be improper.

Don's has joined the procuring activity on the rejection of Pulse on the basis that Pulse does not comply with wage and hour requirements and does not withhold income and social security taxes from its employees' checks. If a contracting officer has reason to believe that there is a lack of business integrity on the part of a small business bidder, the COC procedures are not required to be followed with respect to the bidder. However, provision is made for notification to SBA of such a negative determination and SBA may appeal to the head of the procuring activity, whose decision is final. FPR § 1-1.708-2(5).

In view of the foregoing, it is recommended that the matter of Professional and Pulse be referred to SBA in accordance with the procedures prescribed in FPR § 1-1.708 et seq.


Deputy Comptroller General,
of the United States

- "e. Shall have oxygen and oxygen breathing apparatus in good operating condition; oxygen masks must be of the disposable type or be thoroughly sterilized after each use and kept sterile."

Bids were opened as scheduled on June 17, 1975. Professional Ambulance Company (Professional) submitted the low bid of \$159,800. Pulse Ambulance (Pulse) submitted the second low bid in the amount of \$179,442.50. Don's Ambulance Service, Inc. (Don's), was third low bidder with a bid of \$194,875.

On June 25, 1975, the facilities and equipment of Professional, Pulse and Don's were inspected by a committee from the hospital. The inspection committee recommended that award not be made to Professional because the company had been in operation only 90 days, its attendants were not properly trained and there was a shortage of personnel. The committee also recommended against an award to Pulse because the following deficiencies were noted:

- a. Attendants were not adequately trained.
- b. The company's ambulances and equipment showed evidence of wear and the appearance of the linen and first aid supplies did not suggest daily or even frequent inspections.
- c. The oxygen breathing apparatus equipment was not ready for use.
- d. There were no records kept on personnel as to the character and physical capabilities of performing the duties of an ambulance driver or attendant.
- e. None of the vehicles had any kind of inspection reports to show any daily maintenance made on them. The interiors of the vehicles were not clean in appearance.

The committee recommended an award to Don's, because its equipment and personnel were determined to be satisfactory.